

# **Chapter 19.285 RCW**

## **ENERGY INDEPENDENCE ACT**

19.285.010

Intent.

This chapter concerns requirements for new energy resources. This chapter requires large utilities to obtain fifteen percent of their electricity from new renewable resources such as solar and wind by 2020 and undertake cost-effective energy conservation.

[2007 c 1 § 1 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.020

Declaration of policy.

Increasing energy conservation and the use of appropriately sited renewable energy facilities builds on the strong foundation of low-cost renewable hydroelectric generation in Washington state and will promote energy independence in the state and the Pacific Northwest region. Making the most of our plentiful local resources will stabilize electricity prices for Washington residents, provide economic benefits for Washington counties and farmers, create high-quality jobs in Washington, provide opportunities for training apprentice workers in the renewable energy field, protect clean air and water, and position Washington state as a national leader in clean energy technologies.

[2007 c 1 § 2 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.030

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Coal transition power" has the same meaning as defined in RCW

[80.80.010](#).

(5) "Commission" means the Washington state utilities and transportation commission.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" has the same meaning as defined in RCW [80.52.030](#).

(8) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington where the generation does not result in new water diversions or impoundments;

(d) Qualified biomass energy; or

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and (ii) the qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months or more.

(13) "Investor-owned utility" has the same meaning as defined in RCW [19.29A.010](#).

(14) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(15)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the on-site capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(16) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(17) "Public facility" has the same meaning as defined in RCW [39.35C.010](#).

(18) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(19) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW [19.29A.010](#), that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(20) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(21) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW [82.29A.135](#) that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(22) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(23) "Year" means the twelve-month period commencing January 1st and ending December 31st.

[2014 c 45 § 1. Prior: 2013 c 158 § 1; 2013 c 99 § 1; 2013 c 61 § 1; prior: 2012 c 22 § 2; 2009 c 565 § 20; 2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

#### **Notes:**

**Findings -- Intent -- 2012 c 22:** "(1) The legislature finds that: (a) Pulping liquors can be used to reduce harmful pollution and produce electricity and thermal energy that enables pulp and paper facilities to be highly energy efficient; (b) biomass facilities and pulp and paper mills are typically located in communities that are disproportionately affected by economic downturns; (c) mill closures have occurred throughout the state for

more than a decade and the remaining ones have become all the more dependent on selling wood residuals, which are used for electricity generation, in order to sustain their economic viability; (d) employment at pulp and paper mills in the state has also declined significantly, most recently in Grays Harbor and Snohomish counties; (e) wood derived biomass is a renewable fuel for generating electricity and considered carbon-neutral under the laws of the state of Washington; and (f) using food processing residues, food waste, and yard waste to generate renewable electricity can benefit rural economies, decrease the amount of solid waste that requires disposal, and reduce greenhouse gas emissions that result from organic decay.

(2) The legislature declares that, by promoting the generation of renewable energy from biomass, particularly in economically distressed communities, it intends to ensure greater economic stability for the communities that have suffered heavy job losses and chronic unemployment.

(3) The legislature further declares that: (a) The owners of qualified biomass energy facilities that must comply with the renewable energy standards under the energy independence act of 2006, either as a matter of law or contractual obligation, should be permitted to use qualified biomass energy credits to meet their obligations; and (b) electricity that is generated by a biomass energy facility that entered commercial operation after March 31, 1999, from the combustion of organic by-products of pulping and the wood manufacturing process should be treated as an eligible renewable resource." [2012 c 22 § 1.]

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19.285.040

Energy conservation and renewable energy targets.

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in the most recently published regional power plan as it existed on June 12, 2014, or a subsequent date as may be provided by the department or the commission by rule, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. Nothing in the rule adopted under this subsection precludes a qualifying utility from using its utility specific conservation measures, values, and assumptions in identifying its achievable cost-effective conservation potential. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, beginning on January 1, 2014, cost-effective conservation achieved by a qualifying utility in excess of its biennial acquisition target may be used to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty percent of any biennial target may be met with excess conservation savings.

(ii) Beginning January 1, 2014, a qualifying utility may use single large facility conservation savings in excess of its biennial target to meet up to an additional five percent of the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined. For the purposes of this subsection (1)(c)(ii), "single large facility conservation savings" means cost-effective conservation savings

achieved in a single biennial period at the premises of a single customer of a qualifying utility whose annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(iii) Beginning January 1, 2012, and until December 31, 2017, a qualifying utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage, may use cost-effective conservation from that industrial facility in excess of its biennial acquisition target to help meet the immediately subsequent two biennial acquisition targets, such that no more than twenty-five percent of any biennial target may be met with excess conservation savings allowed under all of the provisions of this section combined.

(d) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(e) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(f) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW

19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under this subsection.

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified

biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006.

[2014 c 26 § 1; 2013 c 158 § 2; 2012 c 22 § 3; 2007 c 1 § 4 (Initiative Measure No. 937, approved November 7, 2006).]

**Notes:**

**Findings -- Intent -- 2012 c 22:** See note following RCW [19.285.030](#).

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19.285.045

Energy conservation and renewable energy targets — Analysis and advisory opinion.

When requested by a consumer-owned qualifying utility or by a person proposing an electric generation project or conservation resource, the department is authorized to and shall provide analysis and an advisory opinion on whether a proposed electric generation project or conservation resource qualifies to meet a target under RCW

[19.285.040](#). The advisory opinion must include a legal analysis. When forming its advisory opinion, the department must: (a) Consider, and may rely on, previous opinions issued by the I-937 technical working group established by the commission and the department; and (b) solicit and consider comments from interested parties, including staff of the requesting utility. The department must give priority to any application regarding an electric generation project or conservation resource that previously received an affirmative advisory opinion from the I-937 technical working group.

(2) Consumer-owned qualifying utilities and persons proposing electric generation projects or conservation resources may apply for an advisory opinion from the department. The application must be in writing and must include information that accurately describes the proposed project or resource. Within ninety days of receiving an application, the director of the department must issue a signed advisory opinion on whether the proposed project or resource qualifies to meet a target under RCW [19.285.040](#). The governing board of the consumer-owned utility that will use the resource or project must either adopt or reject the advisory opinion after public notice and hearing. Under its responsibilities in RCW [19.285.060](#), the auditor shall consider any project or resource reviewed and adopted under the process in this section as being in compliance with RCW [19.285.040](#) and [19.285.060](#), but only if: (a) The advisory opinion affirmatively qualifies the project or resource; (b) the governing board of the consumer-owned utility that will use the project or resource adopts the advisory opinion after public notice and hearing; and (c) the project or resource is built or acquired as proposed.

(3) The department may require an applicant to pay an application fee to cover the cost of reviewing the project and preparing an advisory opinion.

(4) An electric generation project reviewed and adopted under this section may produce renewable energy credits as defined in RCW [19.285.030](#).

(5) The department may adopt rules to implement this section.

(6) Nothing in this section preempts the authority of any governing board of a consumer-owned utility from making a determination, independent of the process in this section, on whether a proposed electric generation project or conservation resource may qualify to meet a target under RCW [19.285.040](#).

[2012 c 254 § 1.]

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#### 19.285.050

Resource costs.

(1)(a) A qualifying utility shall be considered in compliance with an annual target created in RCW

[19.285.040](#)(2) for a given year if the utility invested four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, the cost of renewable energy credits, or a combination of both, but a utility may elect to invest more than this amount.

(b) The incremental cost of an eligible renewable resource is calculated as the difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(2) An investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter. The commission shall address cost recovery issues of qualifying utilities that are investor-owned utilities that serve both in Washington and in other states in complying with this chapter.

[2007 c 1 § 5 (Initiative Measure No. 937, approved November 7, 2006).]

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#### 19.285.060

Accountability and enforcement — Energy independence act special account.

Except as provided in subsection (2) of this section, a qualifying utility that fails to comply with the energy conservation or renewable energy targets established in RCW

[19.285.040](#) shall pay an administrative penalty to the state of Washington in the amount of fifty dollars for each megawatt-hour of shortfall. Beginning in 2007, this penalty shall be adjusted annually according to the rate of change of the inflation indicator, gross domestic product-implicit price deflator, as published by the bureau of economic analysis of the United States department of commerce or its successor.

(2) A qualifying utility that does not meet an annual renewable energy target established in RCW [19.285.040](#)(2) is exempt from the administrative penalty in subsection (1) of this section for that year if the commission for investor-owned utilities or the auditor for all other qualifying utilities determines that the utility complied with RCW [19.285.040](#)(2) (d) or (i) or [19.285.050](#)(1).

(3) A qualifying utility must notify its retail electric customers in published form within three months of incurring a penalty regarding the size of the penalty and the reason it was incurred.



(4) The commission shall determine if an investor-owned utility may recover the cost of this administrative penalty in electric rates, and may consider providing positive incentives for an investor-owned utility to exceed the targets established in RCW [19.285.040](#).

(5) Administrative penalties collected under this chapter shall be deposited into the energy independence act special account which is hereby created. All receipts from administrative penalties collected under this chapter must be deposited into the account. Expenditures from the account may be used only for the purchase of renewable energy credits or for energy conservation projects at public facilities, local government facilities, community colleges, or state universities. The state shall own and retire any renewable energy credits purchased using moneys from the account. Only the \*director of general administration or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter [43.88](#) RCW, but an appropriation is not required for expenditures.

(6) For a qualifying utility that is an investor-owned utility, the commission shall determine compliance with the provisions of this chapter and assess penalties for noncompliance as provided in subsection (1) of this section.

(7) For qualifying utilities that are not investor-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance.

[2007 c 1 § 6 (Initiative Measure No. 937, approved November 7, 2006).]

**Notes:**

**\*Reviser's note:** The "director of general administration" was renamed the "director of enterprise services" by 2011 1st sp.s. c 43 § 108.

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**19.285.070**

Reporting and public disclosure.

On or before June 1, 2012, and annually thereafter, each qualifying utility shall report to the department on its progress in the preceding year in meeting the targets established in RCW

[19.285.040](#), including expected electricity savings from the biennial conservation target, expenditures on conservation, actual electricity savings results, the utility's annual load for the prior two years, the amount of megawatt-hours needed to meet the annual renewable energy target, the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired, and the percent of its total annual retail revenue requirement invested in the incremental cost of eligible renewable resources and the cost of renewable energy credits. For each year that a qualifying utility elects to demonstrate alternative compliance under RCW [19.285.040](#)(2) (d) or (i) or [19.285.050](#)(1), it must include in its annual report relevant data to demonstrate that it met the criteria in that section. A qualifying utility may submit its report to the department in conjunction with its annual obligations in chapter [19.29A](#) RCW.

(2) A qualifying utility that is an investor-owned utility shall also report all information required in subsection (1) of this section to the commission, and all other qualifying utilities shall also make all information required in subsection (1) of this section available to the auditor.

(3) A qualifying utility shall also make reports required in this section available to its customers.

[2007 c 1 § 7 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.080

Rule making.

The commission may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities.

(2) The department shall adopt rules concerning only process, timelines, and documentation to ensure the proper implementation of this chapter as it applies to qualifying utilities that are not investor-owned utilities. Those rules include, but are not limited to, rules associated with a qualifying utility's development of conservation targets under RCW

[19.285.040](#)(1); a qualifying utility's decision to pursue alternative compliance in RCW [19.285.040](#)(2) (d) or (i) or [19.285.050](#) (1); and the format and content of reports required in RCW [19.285.070](#). Nothing in this subsection may be construed to restrict the rate-making authority of the commission or a qualifying utility as otherwise provided by law.

(3) The commission and department may coordinate in developing rules related to process, timelines, and documentation that are necessary for implementation of this chapter.

(4) Pursuant to the administrative procedure act, chapter [34.05](#) RCW, rules needed for the implementation of this chapter must be adopted by December 31, 2007. These rules may be revised as needed to carry out the intent and purposes of this chapter.

[2007 c 1 § 8 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.900

Construction — 2007 c 1 (Initiative Measure No. 937).

The provisions of this chapter are to be liberally construed to effectuate the intent, policies, and purposes of this chapter.

[2007 c 1 § 9 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.901

Severability — 2007 c 1 (Initiative Measure No. 937).

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[2007 c 1 § 10 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.902

Short title — 2007 c 1 (Initiative Measure No. 937).

This chapter may be known and cited as the energy independence act.

[2007 c 1 § 11 (Initiative Measure No. 937, approved November 7, 2006).]

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19.285.903

Captions not law — 2007 c 1 (Initiative Measure No. 937).

Captions used in this chapter are not any part of the law.

[2007 c 1 § 12 (Initiative Measure No. 937, approved November 7, 2006).]